

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ELENA DEL CAMPO on behalf of herself )  
and all others similarly situated, )

Plaintiff, )

v. )

AMERICAN CORRECTIVE )  
COUNSELING SERVICES, et al., )

Defendants. )  
\_\_\_\_\_)  
)  
)  
)

Case No.: C 01-21151 JW (PVT)

**ORDER GRANTING IN PART AND  
DEFERRING IN PART DEFENDANTS'  
MOTION TO COMPEL PRODUCTION OF  
DOCUMENTS**

**I. Introduction**

In the consolidated complaint filed on May 1, 2006, Plaintiffs alleged the following against Defendants: (1) violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq.; (2) violations of the Civil Rights Act, 42 U.S.C. § 1983; (3) violations of Sections 1 and 7 of Article I of the California Constitution; (4) a violation of the California Business & Professions Code § 17200 et seq.; (5) conversion; (6) fraudulent misrepresentation; and (7) negligent misrepresentation. Currently in front of this Court is Defendants' Motion to Compel Production of Documents. Defendants seek to compel two types of documents: (1) public records from district attorneys that relate to any program administered by ACCS or that reference any defendant in this action, and (2) Plaintiff Artz's home study workbook. On July 29, 2008, the parties appeared for hearing. Having

1 reviewed the papers and considered the arguments of counsel and for the reasons set forth below, the  
 2 court grants in part, and denies in part, Defendants' motion to compel.<sup>1</sup>

## 3 **II. Background**

4 On December 5, 2007, Defendant Mealing propounded document requests on each of the  
 5 Plaintiffs. Plaintiffs served written responses and objections to these requests on January 11, 2008.  
 6 After obtaining an extension from Mealing, Plaintiffs produced some documents responsive to the  
 7 request on March 8, 2008. Similarly, on February 21, 2008 and March 31, 2008, ACCS propounded  
 8 additional document requests to each of the Plaintiffs. Plaintiffs served written responses and  
 9 objections to ACCS's requests on April 3, 2008 and April 30, 2008, respectively. In sum, Plaintiffs  
 10 refused to produce thousands of documents they obtained from public agencies, pursuant to public  
 11 record requests, that relate to the bad check diversion programs at issue or that reference the  
 12 defendants in this lawsuit. Plaintiffs did not provide a privilege log indicating that documents were  
 13 being withheld from production and the basis for withholding the documents.

14 Both Mealing and ACCS's counsel requested a meet and confer with Plaintiffs' counsel on  
 15 May 2, 2008 and June 6, 2008, respectively. During the meet and confers, Defendants' counsel  
 16 learned about Plaintiff Artz's home study workbook. Subsequent to a telephonic meet and confer,  
 17 counsel exchanged letters wherein each side reiterated their positions with regard to the  
 18 discoverability of the documents obtained by Plaintiffs from third parties through various public  
 19 record act requests. Plaintiffs' counsel confirmed that Plaintiffs would not produce a privilege log.  
 20 Despite numerous meet and confer efforts, the parties were unable to resolve their dispute over the  
 21 documents obtained pursuant to public record act requests and production of Plaintiff Artz's home  
 22 study workbook. This motion followed.

## 23 **III. Legal Standards**

24 Under the Federal Rules of Civil Procedure,

25 [p]arties may obtain discovery regarding any matter, not  
 26 privileged, that is relevant to the claim or defense of any  
 27 party,...Relevant information need not be admissible at the trial if  
 the discovery appears reasonably calculated to lead to the

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28 <sup>1</sup>This holding of this court is limited to the facts and particular circumstances underlying the present motion.

discovery of admissible evidence.

Fed. R. Civ. P. 26(b)(1). The scope of discovery is broad and encompasses any matter that bears on, or that reasonably could lead to another matter that could bear on, any issue that is or may be in the case. *See Oregon Precision Industries, Inc. v. International Omni-Pac Corp.*, 160 F.R.D. 592, 594 (D. Or. 1995). Mutual knowledge of all relevant facts gathered by parties to litigation is essential so that a party may, in good faith, compel the other to disclose what relevant facts he has in his possession, if not otherwise privileged. *See Hickman v. Taylor*, 329 U.S. 495, 507 (1947). A party asserting a privilege bears its burden of proof; however, the party seeking production may obtain discovery only upon a showing that the party has a substantial need of materials in preparation of the party's case and the party is unable to obtain substantial equivalent materials by other means without substantial hardship. *See E.E.O.C. v. Guess?, Inc.*, 176 F. Supp. 2d 416, 423 (E.D. Pa. 2001). Nevertheless, it is not a bar to the discovery of relevant material that the same material may be in the possession of the requesting party or obtainable from another source. *See Fort Washington Resources, Inc. V. Tannen*, 153 F.R.D. 78, 79 (E.D. Pa. 1994). In addition, it is usually not objectionable when the information sought by discovery is a matter of public record. *See Petraska v. Johns-Manville*, 83 F.R.D. 32, 35 (E.D. Pa. 1979); *see also Riordan v. Ferguson*, 2 F.R.D. 349, 350 (S.D.N.Y. 1942).

#### **IV. Discussion**

##### **A. Public Record Requests**

Plaintiffs fail to show a reason why Defendants should not receive their requested public records. Plaintiffs have confirmed that the documents in question were obtained from district attorneys in Indiana and California. In addition, Plaintiffs have also confirmed that these documents were prepared by ACCS or by prosecuting agencies with which ACCS contracted services. Plaintiffs first argue that Plaintiffs should not be compelled because the requests are overbroad and burdensome. Specifically, Plaintiffs state that their burden in providing the documents would outweigh Defendants' need for the documents. Plaintiffs base this assertion on the assumption that ACCS already has most of the documents. However, a mere statement that production would be burdensome is not enough to avoid discovery obligations. *See St. Paul Reinsurance Co., Ltd. v.*

1 *Commercial Financial Corp.*, 198 F.R.D. 508, 511 (N.D. Iowa 2000). Defendants respond by  
2 stating that the burden to both themselves and to the various government agencies would be high  
3 because Defendants would have to serve duplicative public record act requests. In addition,  
4 Defendants state that the public agencies may no longer have the documents because Plaintiffs'  
5 requests were made over the past six years. Lastly, Defendants state that Plaintiffs have not shown  
6 that the request is burdensome because all of the documents are compiled into seven banker boxes.

7 Plaintiffs also asserted that the requests were founded on an improper purpose. Specifically,  
8 Plaintiffs allege that Defendants have engaged in prior discovery abuses. Plaintiffs also assert that  
9 Defendants want the documents in order to make tactical decisions about its defense and pending  
10 discovery. Plaintiffs may not avoid discovery obligations because of defendants' alleged abuses.  
11 *See Fresenius Medical Care Holding, Inc. v. Baxter Intern, Inc.*, 224 F.R.D. 644, 653 (N.D. Cal.  
12 2004). Moreover, Defendants have not demonstrated any actual evidence of an improper purpose.  
13 Therefore, Defendants' motion to compel should be granted with respect to the public records.

#### 14 **B. Plaintiff Artz's Workbook**

15 Defendants also move to compel Plaintiff Artz's home study workbook. Defendants claim  
16 that Plaintiff Artz is unreasonably withholding the home study workbook. Plaintiff Artz, however,  
17 asserts that the workbook is protected by her right to privacy. *See A. Farber & Ptnrs, Inc. v.*  
18 *Garber*, 234 F.R.D. 186, 191 (C.D. Cal. 2006). Although, the right of privacy is not an absolute bar  
19 to discovery, it must be balanced against the need for the information. *See Ragge v. MCA/Universal*  
20 *Studios*, 165 F.R.D. 601, 604 (C.D. Cal. 1998). Here, Plaintiffs state that the workbook contains  
21 information regarding Ms. Artz's state of mind and general financial practices. Defendants,  
22 however, state that the workbook contains communications between ACCS and Plaintiff Artz. Since  
23 it is unclear what information the workbook contains, the Court orders an *in camera* inspection of  
24 the workbook for further determination.

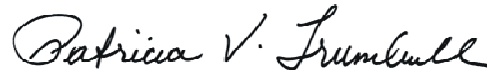
#### 25 **V. Conclusion**

26 Based on the foregoing reasons, Defendants' motion to compel is GRANTED with respect to  
27 Mealing's First Set of Requests for Production of Documents (Requests Nos. 3 and 4) and Second  
28 Set of Requests for Production of Documents (Request Nos. 4, 6, and 7) and ACCS's First Set of

1 Requests for Production of Documents (Request No. 16), Second Set of Requests for Production of  
2 Documents (Request Nos. 2, 3, and 4) and Third Set of Requests for Production of Documents  
3 (Request Nos. 2 and 3). Plaintiffs shall produce responsive documents no later than August 15,  
4 2008. Defendants shall bear the cost of copying the above-specified documents. Defendants'  
5 motion to compel production of Plaintiff Artz's home study workbook is DEFERRED pending an *in*  
6 *camera* inspection.

7  
8 IT IS SO ORDERED.

9  
10 Dated: *August 1, 2008*



11  
12 PATRICIA V. TRUMBULL  
United States Magistrate Judge